

February 8, 2016

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Communication, CG Docket No. 02-278  
Blackboard Inc. Petition for Expedited Declaratory Ruling

Dear Ms. Dortch:

On February 4, 2016, Bryan Tramont and the undersigned, counsel to Hubbard Broadcasting, Inc. (“Hubbard”), met with Commissioner Mignon Clyburn, Holly Saurer, Acting Media Legal Advisor, and Karl Gerner, Law Clerk in the Office of Commissioner Clyburn. During the meeting, we expressed support for the petition (the “Petition”) of Blackboard Inc. (“Blackboard”),<sup>1</sup> which asks the Federal Communications Commission (“Commission”) to declare that the Telephone Consumer Protection Act (“TCPA”) and the Commission’s TCPA rules do not apply to informational, non-commercial, non-advertising, and non-telemarketing autodialed and prerecorded messages sent by educational institutions because those calls are made for “emergency purposes.”<sup>2</sup> We emphasized that the Commission should ensure that any relief granted pursuant to the Petition is not limited only to certain schools, but also extends to all schools who utilize the services of any entity that performs the same critical messaging function as Blackboard. For example, the relief should extend to service providers like broadcasters who work directly with schools in order to send critical school-related public safety announcements, such as school closings.<sup>3</sup>

The Commission has recognized and encouraged the critical role broadcasters play in informing their communities about emergencies, including catastrophic weather events and

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<sup>1</sup> Petition for Expedited Declaratory Ruling of Blackboard Inc., CG Docket No. 02-278 (filed Feb. 24, 2015) (“Petition”).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> An example of a text message announcing a school’s delayed opening is attached hereto.

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school closings.<sup>4</sup> To reach the community better, many broadcasters like Hubbard have partnered with schools to offer free services by which parents and other members of the school community choose to opt-in to receive text message alerts regarding emergency developments at particular schools. As the record makes clear, timely school-related text message notifications are essential for health and safety.<sup>5</sup> Parents and other members of all school communities desire and expect to receive these notifications whether from a commercial provider like Blackboard or another provider like broadcasters.<sup>6</sup>

Nevertheless, despite consumer consent and the fact that such alerts “are quite obviously emergencies,”<sup>7</sup> the Commission’s recent TCPA order’s treatment of reassigned numbers<sup>8</sup> and the

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<sup>4</sup> See 47 C.F.R. § 73.1250(a) (“Emergency situations in which broadcasting of information is considered as furthering the safety of life and property include, but are not limited to the following: Tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gasses, widespread power failures, industrial explosions, civil disorders and *school closing and changes in school bus schedules* resulting from such condition.”) (emphasis added).

<sup>5</sup> See, e.g., Comments of the Fairfax County Public Schools, CG Docket No. 02-278, at 2 (filed Apr. 15, 2015) (“FCPS Comments”) (explaining that automated and prerecorded messages sent by Fairfax County Public Schools provide “critical education-related information to members of the school community”); Comments of the Los Angeles Unified School District, CG Docket No. 02-278, at 2 (filed Apr. 15, 2015) (“LAUSD Comments”) (explaining that automated and prerecorded messages sent by the Los Angeles Unified School District provide “critical education-related information to members of the school community”); Comments of the District of Columbia Public Schools, CG Docket No. 02-278, at 1 (filed Apr. 22, 2015) (“DCPS Comments”) (stating that educational organizations depend on automated and prerecorded messages to send mass notifications to parents, guardians, students, and faculty regarding emergency weather closures and other important education-related information); Comments of Kecia Ray, Ed.D., CG Docket No. 02-278, at 1 (filed Apr. 22, 2015) (“[W]hen viewed from a parent’s perspective, lots of school messages are critical for child health and safety.”); Reply Comments of the Board of Education of the City of Chicago Law Department, CG Docket No. 02-278, at 1 (filed May 7, 2015) (School notifications “directly affect the health and safety of America’s school children, as well as their parents and guardians.”).

<sup>6</sup> See, e.g., DCPS Comments at 1 (stating that recipients of school-related mass notifications expect to receive them and consider them an essential part of the school’s educational responsibility, especially in a crisis or emergency situation); FCPS Comments at 3 (same); LAUSD Comments at 3 (same). In a similar vein, members of the community consider broadcasters’ delivery of critical information, including school closing information, essential.

<sup>7</sup> Notice of *Ex Parte* Presentation of National Consumer Law Center et al., CG Docket No. 02-278, at 9 (filed Aug. 24, 2015).

<sup>8</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7998-99 ¶ 72 (2015) (clarifying that the TCPA requires the consent of the current subscriber, rather than intended recipient of a call, but allowing callers without knowledge of reassignment of the intended recipient’s number and with a reasonable basis to believe they have valid consent to make the call to initiate one call after reassignment).

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rising number of TCPA private actions<sup>9</sup> pose risks to schools and broadcasters that send these alerts and provide this important public service.

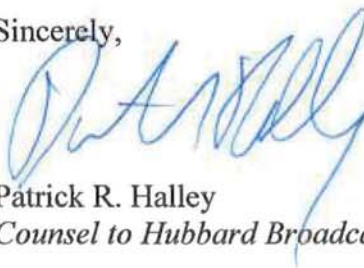
The Petition seeks to ensure that Blackboard and its educational institution customers can continue to send important school-related alerts to parents and members of the school community without risking TCPA liability. Extending the relief to broadcasters working with schools will ensure that schools that do not subscribe to Blackboard's suite of services also have emergency alerting tools available to them. The Commission should act now to ensure all school partners, including Hubbard and other broadcasters, have the confidence in knowing these alerts will not expose them to liability.

Unnecessarily narrow relief here would force broadcasters to file a petition seeking the exact same relief. The Commission should make clear that it does not matter who a school is partnering with to send these types of messages. It does not serve the public interest or the Commission's interest in efficient resolution of proceedings to begin an entirely new pleading cycle to extend this relief to other school partners, such as broadcasters.

Therefore, for the reasons stated above, the Commission should declare that informational, autodialed and prerecorded school closing and other school-related emergency alert messages are calls made for "emergency purposes" regardless of the party working with the schools to send these messages. Such relief will ensure that educational institutions and broadcasters are able to continue to provide this important public service.

Please do not hesitate to contact the undersigned with any questions.

Sincerely,



Patrick R. Halley  
*Counsel to Hubbard Broadcasting, Inc.*

cc: Holly Saurer  
Karl Gerner

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<sup>9</sup> See Petition at 4 (noting that Blackboard has been subjected to several private actions initiated by consumers who allege they have received education-related prerecorded messages on their wireless devices in error).

**Appendix: Example of School Delayed Opening Text Message**

